

Highly Confidential - Attorneys' Eyes Only

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
 Plaintiff,)
 vs.) No. CV 10-03561 WHA
GOOGLE, INC.,) VOLUME I
 Defendant.)
_____)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Patent Issues Deposition
of JOHN C. MITCHELL, Ph.D., taken at
755 Page Mill Road, Palo Alto, California,
commencing at 9:43 a.m., Tuesday,
September 6, 2011, before Leslie Rockwood,
RPR, CSR No. 3462.

PAGES 1 - 270

Page 1

Highly Confidential - Attorneys' Eyes Only

<p>1 A. I believe it's important to have adequate and 2 attractive networking connections. Something that's not 3 state-of-the-art would probably impede -- stands to 4 reason something that's not state-of-the-art may impede 5 sales. 6 As an additional factor, I just would point 7 out that as far as I understand -- and it should be easy 8 to find more information about it -- there are various 9 manufacturers of wireless networking hardware, and one 10 may be substitutable for another. 11 Q. So having a 3G air interface or above is also 12 the basis for consumer demand for Android products? 13 A. I think I've explained the importance of that 14 factor. 15 Q. Is it more or less important in the patents 16 patents-in-suit, sir? 17 A. Well, one factor that comes to mind -- and 18 there may be others -- that would occur to me on 19 reflection is that there is -- I believe a -- some degree 20 of substitutability across available networking hardware, 21 whereas as I've laid out in this report, based on my 22 study and evaluation to the best that I'm able to do 23 this, it doesn't appear that there is reasonable 24 substitutability of another platform for the platform 25 that draws critically on the patents-in-suit.</p> <p style="text-align: right;">Page 78</p>	<p>1 11:59 a.m. 2 You may proceed. 3 Q. BY MR. PAIGE: Welcome back, Professor 4 Mitchell. 5 A. Thank you. 6 Q. You say that the Oracle employees Landau, 7 Poore and Vandette conducted certain experiments at your 8 direction; correct? 9 A. I believe that's what it says in that report. 10 Q. Why did you choose to use Oracle employees 11 rather than an independent consulting firm? 12 A. I believe that I asked if it was possible to 13 get someone to help with some kinds of experiments like 14 that or perhaps someone asked me if I knew students, and 15 I suggested that perhaps someone who works for Oracle 16 could be one possibility of doing that. 17 Q. Are there no consulting firms capable of 18 doing the type of work that those employees did? 19 A. There may be. I didn't -- I didn't research 20 that. 21 Q. Did you think it might be better to have 22 someone independent rather than a partisan with a stake 23 in the matter doing these experiments? 24 MR. PETERS: Objection. Form. 25 THE WITNESS: I didn't really even make that</p> <p style="text-align: right;">Page 80</p>
<p>1 Q. So in your opinion, the patents-in-suit are 2 more important than having a 3G air interface on an 3 Android device? 4 A. That's not what I said. 5 Q. Well, what is your opinion? Are the 6 patents-in-suit more important or is having a 3G air 7 interface more important? 8 MR. PETERS: Objection. Form. 9 THE WITNESS: I believe that the -- and it 10 would be possible to look into this if this is an 11 absolutely critical issue, and maybe other people know 12 more about it, but it strikes me that there are likely a 13 number of different ways to assemble a phone with 14 adequate networking so that an individual chip to provide 15 networking could be replaced with another, whereas as I 16 think I tried to explain, I don't see that as being an 17 aspect of the patents-in-suit in the software technology 18 at issue. 19 MR. PAIGE: Okay. We need to take a break to 20 change the tape, please. 21 THE VIDEOGRAPHER: This is the end of Disk 22 Number 1, Volume 1. We are off the record at 11:38 a.m. 23 (Recess.) 24 THE VIDEOGRAPHER: This is the beginning of 25 Disk Number 2, Volume 1. We are back on the record at</p> <p style="text-align: right;">Page 79</p>	<p>1 judgment. It didn't strike me that this would be an 2 issue where partisanship or opinion would have much 3 bearing on it. What I believe those engineers have done 4 is modify the system in various ways that's easily 5 documented and run the system with certain measurements 6 afterwards. I think the results there are probably 7 concrete and can be evaluated objectively. 8 Q. BY MR. PAIGE: Did you design the experiments 9 conducted by Landau, Poore and Vandette? 10 A. I believe I did to a certain degree. That 11 is, the experiments are to the -- as far as I recall, 12 basically comparisons against the Android system or 13 components of it as it exists now versus some 14 modification. As far as I recall, those modifications 15 were modifications that I suggested. 16 Q. Okay. So you're the one who came up with the 17 actual modifications they implemented; is that right? 18 A. At some degree of detail, I believe so. 19 Q. Okay. You might not have done the actual low 20 level code, but you told them on a high level, "This is 21 what I'd like you to do in order to carry out this 22 experiment"? 23 A. I don't remember the exact, you know, wording 24 of the discussion, but I believe I handled it the same 25 way I would with a graduate student. I want them to feel</p> <p style="text-align: right;">Page 81</p>

21 (Pages 78 - 81)